

**Law Office of Shmuel Klein, PC**  
**113 Cedarhill Ave.**  
**Mahwah, NJ 07430**  
**(201) 529-3411**

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEW JERSEY**

\_\_\_\_\_  
**In Re:**

**Angelica Santana**

\_\_\_\_\_  
**Angelica Santana**

**Plaintiff,**

**Vs**

**National City Mortgage**  
**Defendant.**

\_\_\_\_\_  
**National City Mortgage**

**Chapter 13**

**Bankruptcy Case # 09-27767**

**Adversary Case No 09-2737**

**Joint Proposed Scheduling Order:**

**1. A concise statement:**

Plaintiff believes that he is being charged unauthorized late fees, that his payments are being misapplied and that the mortgage account is not being properly credited for payments of interest, principal and escrow charges.

**2. A report on the status of discovery:**

NA

**3. A list of the Factual Issues:**

- A. On July 9, 2009 Plaintiff filed for Chapter 13 Bankruptcy.
- B. Plaintiff took at a mortgage dated 07/2005.
- C. Plaintiff paid his mortgage over the years.
- D. The Plaintiff took these matters up with his attorney as he believed he was current on the payments. The debtor's attorney tendered a "Qualified Written Request" via US Postal service Certified Mail to National City Mortgage, 12 Willow St. Bergenfield, NJ 45342 the Real Estate Settlement Procedures Act on or about July 13, 2009. The Defendant received the "Qualified Written Request" on July 09, 2009 according to its USPS tracking number. Defendant did not acknowledge the receipt of the "Qualified Written Request" by July 29, 2009, twenty days after its delivery. Defendant did not respond to the "Qualified Written Request" by September 9, 2009 sixty days after it receipt.
- E. As of the filing of this pleading the said Defendant has failed to have any form of communication with the debtor's attorney, or with the debtor to respond to or acknowledge the aforesaid Qualified Written Requests regarding the subject account.
- F. The Plaintiff has suffered actual damages including, but not limited to, having paid excess charges, excess interest, unauthorized fees and other charges, including principal and interest, and credit not having been properly applied for Plaintiff's account as a result of Defendant having Plaintiff's payments in suspense account.

**4. A list of the Legal Issues:**

- a. The "qualified written requests" was not acknowledged within 20 days of receipt as required by Section 2605(e)(1)(A) of Title 12 of the United States Code and Section 3500.21(e)(1) of Reg. X. The Defendant did not, within 60 days of receipt of the "qualified written requests," provide the information requested and inform the Plaintiff of its actions as required by Section 2605(e)(1)(B)(2) Title 12 of the United States Code and Section 3500.21(e)(3) of Reg. X.
- b. The Defendant has failed to comply with Section 2605 of Title 12 of the United States Code and failed to credit Plaintiff for payments made on the mortgage.
- c. Pursuant to Section 2605(f) of Title 12 of the United States Code and Section 3500.21(f) of Reg. X, the Plaintiff may recover of the Defendant actual damages, costs and reasonable attorney fees for each failure of the Defendant to comply with any part of Section 2605 of Title 12 of the United States Code.

**4. An itemized statement of damages:**

- A. That the Plaintiff seeks to recover against the Defendant a sum to be determined by the Court in the form of actual damages;
- B. That the Plaintiff seeks to recover against the Defendant a sum to be determined by the Court in the form of statutory damages;
- C. That the Plaintiff seeks to recover against the Defendant a sum to be determined by the Court in the form of punitive damages;

- D. That the Plaintiff seeks to recover against the Defendant all reasonable legal fees and expenses incurred by their attorney;
- E. That the underlying debt to National City Mortgage be forever canceled and discharged and the Defendant be ordered to release all liens on the residence of the debtor and mark "paid in full" on all loan documents with said documents to be delivered to the debtor with all liens duly canceled and released as an additional sanction provided for under Section 362(h) of Title 11 of the United States Code; and
- F. That this Court order the Defendant to pay to the Plaintiff their attorney's fees and costs and additional actual damages a sum to be determined by the Court for each failure to comply with any part of Section 2605 of Title 12 of the United States Code pursuant to Section 2605(f) of Title 12 of the United States Code and Section 3500.21(f) of Reg. X; and
- G. That the Plaintiff has such other and further relief as the Court may deem just and proper.

**5. A statement why a Joint proposed Scheduling order wasn't submitted:**

NA

**6. An estimated date for trial readiness:**

2 Months

**7. An estimated length of trial:**

2 days

**8. A witness list:**

Plaintiff: Angelica Santana  
12 Willow St.  
Bergenfield, NJ 07621

Employees of National City Mortgage:  
3232 Newark Drive  
Miamisburg, Ohio 45342

**9. Any other information:**

NA